

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI -- EASTERN DIVISION

DOUGLAS PHILLIP BRUST DC PC,)
INDIVIDUALLY AND ON BEHALF OF ALL)
OTHERS SIMILARLY SITUATED)
Plaintiff,)

vs.)

ORTHOPEDIC PHARMACEUTICALS, INC.)
Defendant.)
_____)

CIVIL ACTION NO: 4:14-cv-01170

NOTICE OF REMOVAL

COMES NOW Defendant ORTHOPEDIC PHARMACEUTICALS, INC. ("ORTHOPEDIC"), by and through its undersigned Counsel, and pursuant to 28 U.S.C. §§, 1441 and 1446, hereby gives Notice of Removal of this action brought by Plaintiff DOUGLAS PHILLIP BRUST DC PC ("BRUST") against ORTHOPEDIC from the CIRCUIT COURT OF ST. LOUIS COUNTY, Missouri, to the United States District court for the Eastern District of Missouri, Eastern Division. The ground for removal is that this claim is within the original jurisdiction of "the district courts of the United States" and is therefore properly removable pursuant to 28 U.S.C. §1441(a). In support of this Notice and as grounds for removal, ORTHOPEDIC respectfully states as follows:

1. On or about April 30, 2014, Plaintiff BRUST commenced the above-titled civil action in the 21st Judicial Circuit Court, St. Louis County, Missouri, by filing a Class Action Complaint and Petition for Class Certification in CIVIL ACTION No. 14SL-CC01422 ("COMPLAINT").

2. Defendant ORTHOPEDIC's Registered Agent and local Florida counsel was served with the COMPLAINT on June 2, 2014. A true and correct copy of the COMPLAINT is attached hereto within Exhibit 1.

3. As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. §1441(a) and §1446, because this is an action involving a claim under Federal law that is within the original jurisdiction of the district courts of the United States. Accordingly, ORTHOPEDIC has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action.

I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

4. This NOTICE OF REMOVAL is filed within thirty (30) days of ORTHOPEDIC's receipt of the initial pleading in CIVIL ACTION No. 14SL-CC01422, and thus complies with the requirements of 28 U.S.C. 1446(b).

5. No proceedings have occurred in CIVIL ACTION No. 14SL-CC01422 in the 21st Judicial Circuit Court of St. Louis County, Missouri, as of the date of the filing this Notice of Removal. ORTHOPEDIC has not filed a responsive pleading to the COMPLAINT.

6. Removal does not require the consent of any party.

7. Removal to this Court is proper because the COMPLAINT in CIVIL ACTION No. 14SL-CC01422 was filed in the 21st Judicial Circuit Court of St. Louis County, Missouri, which is located within the Eastern Division of the United States District Court for the Eastern District of Missouri.

8. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the complete record in the 21st Judicial Circuit Court of St. Louis County, Missouri, including all process,

pleadings, and orders served upon Defendant ORTHOPEDIC, in CIVIL ACTION No. 14SL-CC01422 is attached as Exhibit 2 to this NOTICE OF REMOVAL.

9. Pursuant to 28 U.S.C. § 1446(d), Defendant ORTHOPEDIC shall promptly give written notice of the filing of this NOTICE OF REMOVAL in CIVIL ACTION No. 14SL-CC01422 to all adverse parties and shall file a copy of the notice with the Clerk of the 21st Judicial Circuit Court of St. Louis County, Missouri.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION

10. The COMPLAINT in this case contains a class action claim for damages under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”). Such claims are within the original jurisdiction of the district courts of the United States under 28 U.S.C. § 1331. See Mims v. Arrow Financial Services, LLC 132 S.Ct. 740 (2012)(holding that TCPA claim arises under the laws of the United States).

11. Under 28 U.S.C. 1441(a), any action brought in a “State court of which the district courts of the United States have original jurisdiction may be removed” to the district court of the United States for the “district and division embracing the place where such action is pending.”

12. The 21st Judicial Circuit Court of St. Louis County, Missouri, where the Complaint was filed, is within the Eastern Division of the United States District Court for the Eastern District of Missouri. Accordingly, removal to this Court and this Division is proper.

13. The filing of this NOTICE OF REMOVAL does not waive any defenses including but not limited to lack of personal or subject matter jurisdiction, improper venue or forum, and any defenses whether legal or equitable under State or Federal law.

* * *

WHEREFORE, Defendant ORTHOPEDIC respectfully requests that CIVIL ACTION No. 14SL-CC01422 pending against it in the 21st Judicial Circuit Court of St. Louis County, Missouri, be removed therefrom to the United States District Court for the Eastern District of Missouri, Eastern Division.

Dated: June 30, 2014.

RESPECTFULLY SUBMITTED,

/s/ Karen L. Mayfield-Jones
Karen L. Mayfield-Jones Bar No.: 57813MO
Ronald D. Robinson Bar No.: 42259MO
Brian R. Shank Bar No.: 59955MO
Evans & Dixon, L.L.C.
Attorney for Defendant
Orthopedic Pharmaceuticals, Inc.
211 North Broadway, Suite 2500
St. Louis, Missouri 63102
(314) 552-4107 (Phone); (314) 884-4507
(Fax)
kjones@evans-dixon.com
rrobinson@evans-dixon.com
bshank@evans-dixon.com

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 30 day of June 2014, served the foregoing NOTICE OF REMOVAL and Exhibits thereto by e-mail, on:

Max George Margulis
28 Old Belle Monte Rd.
Chesterfield, Missouri 63017
MaxMargulis@MargulisLaw.com

/s/ Karen L. Mayfield-Jones
Karen L. Mayfield-Jones